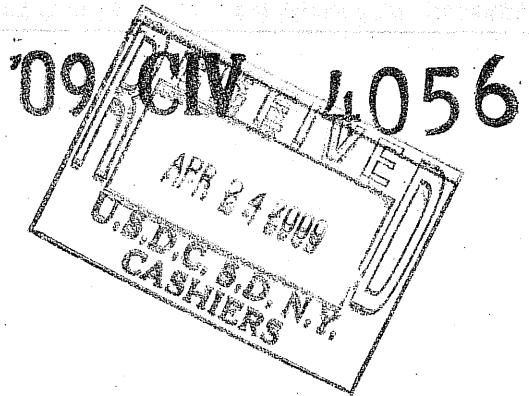


JUDGE CHIN

JAMES P. KRAUZLIS, ESQ.
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Our Ref. : 08-F-006-JK



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ST. PAUL FIRE AND MARINE INSURANCE COM-
PANY a/s/o ABX Logistics (USA), Inc.,

Plaintiff,

- against -

US AIRWAYS, INC.,

Defendant.

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ECF CASE

09 Civ. ()

COMPLAINT

Plaintiff, St. Paul Fire & Marine Insurance Company a/s/o ABX Logistics (USA), Inc., by their attorneys, Badiak & Will, LLP, as and for their Complaint herein against the defendant, alleges upon information and belief as follows:

1. Plaintiff, St. Paul Fire & Marine Insurance Company (hereinafter referred to as "St. Paul"), is and was at all times hereinafter mentioned a corporation organized and existing under and by virtue of the laws of the State of Minnesota and provided all-risk cargo insurance for the subject shipments hereinafter described, and maintained an office and place of business at 485 Lexington Avenue, Suite 500, New York, New York, 10017.

3. Plaintiff, ST. PAUL, has paid the consignee and owner of the shipment mentioned hereinafter pursuant to the cargo insurance policy herein before described and brings this action on its own behalf and as agent and trustee on behalf of and for the interest of all parties who may be or become interested in the said shipments, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action. The shipper and consignee hereinafter mentioned have performed all conditions required on their part to be performed with respect to the subject shipment.

2. Defendant, US AIRWAYS, INC., (hereinafter referred to as "US AIR"), is and was a corporation organized and existing under and by virtue of the laws of one of the states of the United States with an office and place of business at 1 59th Street, New York, New York 10022 and at 75 N. Hanger Road, JFK International Airport, Jamaica, New York 11430, and is and was at all times hereinafter mentioned, a common carrier by air engaged in the international transportation of goods for hire by air.

3. All and singular the following premises are true and constitutes claims involving the international transportation as defined in the Convention for the Unification of Certain Rules Relating to International Transportation by Air ("WARSAW Convention") and, as such, arises under a treaty of the United States and this Court has jurisdiction pursuant to 28 U.S.C. §1331 and/or involves a claim affecting Interstate Commerce within the meaning of 28 U.S.C. §1337 and/or arising under this Court's ancillary and/or pendent jurisdiction.

FIRST CAUSE OF ACTION

4. On or before April 27, 2007, ABX Logistics (USA), Inc., plaintiff's assured and the shipper, delivered or caused to be delivered to defendant US AIR in Charlotte, North

Carolina, a shipment consisting of consolidated cargo, including a shipment of three boxes of shake absorber pads, for carriage from Charlotte, NC, to Milan, Italy, pursuant to an airway bill issued by defendant US AIR numbered 037-18387014, dated April 27, 2007.

5. The shipment, when delivered to defendant US AIR was in good order and condition.

6. Thereafter, Defendant US AIR failed to deliver the shipment to the plaintiff's assured's customer, the consignee, in the same good order, condition and quantity as when shipped, delivered to and received by defendant US AIR, said shipment having been delivered with a shortage and impaired in value.

7. Plaintiff St. Paul insured the subject shipment against risk of loss in transit under a policy of insurance and was obligated to and did make payment to plaintiff's assured for the loss described herein in the amount of \$11,342.73.

8. As a proximate result of defendant US AIR's breach of their contract of air carriage, plaintiff has been damaged in the amount of \$11,342.73.

9. Plaintiff's assured, the shipper and the consignee have all performed all conditions required on their part to be performed pursuant to the terms and conditions of the aforesaid contract of air carriage, including a timely written notice of claim.

10. Accordingly, plaintiff St. Paul is entitled to bring this action as subrogee and is entitled to maintain an action against the defendant US AIR for the losses sustained to the subject shipment.

11. Plaintiff has been damaged in the amount of \$11,342.73, which amount, although duly demanded, has not been paid by defendant US AIR.

SECOND CAUSE OF ACTION

12. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "11", inclusive, hereof with the same force and effect as if fully re-stated at length herein.

13. Defendant US AIR failed to exercise reasonable care in the handling and transit of the foregoing shipment. As a proximate result of defendant US AIR's failure to exercise reasonable care, all without negligence or fault on the part of the plaintiff, its assured or the consignor, plaintiff has been damaged in the amount of \$11,342.73 which amount, although duly demanded, has not been paid.

THIRD CAUSE OF ACTION

14. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "13", inclusive, hereof with the same force and effect as if fully re-stated at length herein.

15. The loss and damage to the aforementioned shipment was the direct and proximate result of defendant US AIR's reckless disregard for the safety of the shipment and/or willful misconduct and/or the reckless disregard for the safety of the shipment and/or willful misconduct on the part of an agent and/or employee of defendant US AIR acting within the scope of their employment, all causing a non-delivery and shortage to the within shipment and damage to the plaintiff in the amount of \$11,342.73.

16. By virtue of the foregoing, plaintiff has been damaged in the amount of \$11,342.73 which amount, although duly demanded, has not been paid.

WHEREFORE, plaintiff St. Paul Fire & Marine Insurance Company demands judgment against the defendant US Airways, Inc., in the amount of \$11,342.73, together with interest and the costs and disbursements of this action.

Dated: New York, New York
April 15, 2009

BADIAK & WILL, LLP
Attorneys for Plaintiff,
ST. PAUL FIRE & MARINE INSURANCE
COMPANY

By: 

JAMES P. KRAUZLIS (JK-4972)